

Office of Chief Counsel
Internal Revenue Service
memorandum

CC: [REDACTED]:TL-N-5394-99
[REDACTED]

date: SEP 28 1999

to: Chief, Examination Division, [REDACTED] District

from: District Counsel, [REDACTED] District, [REDACTED]

subject: **Advisory Opinion**
Depreciation Asset Class for Natural Gas Gathering Systems

Taxpayer: [REDACTED]
TIN: [REDACTED]
Years: [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUE

Whether the holding in Duke Energy Natural Gas Corp. v. Commissioner 172 F.3d 1255 (10th Cir. 1999), rev'g 109 T.C. 416 (1997), which holds that natural gas gathering systems belong to Asset Class 13.2, with a recovery period of seven years rather than Asset class 46.0, with a recovery period of fifteen years, is controlling in this case.

DISCUSSION AND CONCLUSION

This is in response to your request for advice as to how to proceed with certain claims for refund filed by [REDACTED] for the taxable years [REDACTED] and [REDACTED]. The claims are based on the Duke Energy holding that natural gas gathering systems properly belong to Asset Class 13.2 rather than 46.0.

Because jurisdiction for [REDACTED] will ultimately lie in the Tenth Circuit, the Duke Energy decision is controlling in this case. Chief Counsel is in the process of preparing an Action on Decision to reflect nonacquiescence to the Duke Energy decision, to date, however, final approval has not been granted to issue the proposed Action on Decision. Chief Counsel is pursuing a case involving the same issue, which case is presently set for trial in March, 2000, before the U.S. Tax Court. A decision in that case will be appealable to the Eighth Circuit Court of Appeals. A government win in that case will establish the conflict in the circuits for which certiorari to the United States Supreme Court could be sought. In the interim, this issue should be conceded where jurisdiction of the case lies in the Tenth Circuit and the Duke Energy decision cannot be distinguished. Accordingly, the claims in question should be allowed. We further advise that all cases involving this issue be reviewed on a case-by-case basis.

If we can be of further assistance in this matter, please contact Attorney [REDACTED]

[REDACTED]
Assistant District Counsel

cc: Assistant Regional Counsel (TL) [REDACTED]
Assistant Regional Counsel (LC) [REDACTED]